

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of Mortgage Originator's
License of Emortgage Services, Inc.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on before Administrative Law Judge Raymond R. Krause ("ALJ") on April 28, 2009, for a prehearing conference at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101. The prehearing conference was held pursuant to a Notice and Order for Prehearing Conference, dated March 9, 2009.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). The Respondent did not appear in person or by counsel. The record closed upon the Respondent's default on April 28, 2009.

The Notice and Order for Prehearing Conference and Statement of Charges were sent to the Respondent at the last known address filed with the Department.

STATEMENT OF ISSUE

1. Did Respondent fail to maintain, at all times, either a net worth, net intangibles of at least \$250,000, or a surety bond or irrevocable letter of credit in the amount of at least \$50,000 in violation of Minn. Stat. §§ 58.06, subd. 2(c)(v), and 58.12, subd. 1(b)(2)(i) (2008)?

2. Did the Respondent fail to notify the Commissioner of any change in its surety bond within ten days in violation of Minn. Stat. §§ 58.06 subd. 2(b)(2) and (c)(iii), and 58.12, subd. 1(b)(2)(iii) (2008)?

3. Did the Respondent fail to respond to the Department's information request in violation of Minn. Stat. §§ 45.027, subd. 7(a)(3), and 58.12, subd. 1(b)(2)(ix) (2008)?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On March 9, 2009, the Notice and Order for Prehearing Conference, Statement of Charges, and Notice of Appearance was sent by first class mail to Emortgage Services, Inc.

2. The Respondent failed to appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

3. The Notice and Order for Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the prehearing conference, settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that Respondent may be subject to discipline by the Commissioner, including debarment, revocation, suspension, censure, or the imposition of civil penalties.

4. Because Respondent failed to appear, it is in default.

5. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 45.027, subd. 1, 45.024, and 14.50 (2004).

2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues

set out in that Notice and Order for Prehearing Conference or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of its failure, without the Administrative Law Judge's prior consent, to appear at the prehearing conference.

6. Respondent failed to maintain, at all times, either a net worth, net intangibles of at least \$250,000, or a surety bond or irrevocable letter of credit in the amount of at least \$50,000 in violation of Minn. Stat. §§ 58.06, subd. 2(c)(v) and 58.12, subd. 1(b)(2)(i) (2008).

7. Respondent failed to notify the Commissioner of any change in its surety bond within ten days in violation of Minn. Stat. §§ 58.06 subd. 2(b)(2) and (c)(iii), and 58.12, subd. 1(b)(2)(iii) (2008).

8. Respondent failed to respond to the Department's information request, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(3), and 58.12, subd. 1(b)(2)(ix) (2008).

9. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Commerce impose discipline upon the Respondent.

Dated this 30th day of April, 2009.

/s/ Raymond R. Krause

RAYMOND R. KRAUSE
Administrative Law Judge

Reported: Digitally recorded

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each

party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.